

REMARKS

Reconsideration and continued examination of this application is respectfully requested. Claims 1-3, and 5-17 are pending in this application.

1. Status of the Claims

Claims 1-3, and 5-17 are pending in this application. Claims 1, 9, 12, and 17 have been amended to clarify that the method of the present invention comprises mixing ingredients consisting essentially of dry mix ingredients with a binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar (claims 1 and 12) and that dry mix ingredients are mixed with a fat-free liquid binder (claims 9 and 17). Support for this amendment can be found in the specification, as originally filed, for example on:

Page 2, lines 22-32;

Page 4, lines 4-13; and

Page 7, lines 18-27.

2. Prior Art Rejections

Claims 1-3, 5, and 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,451,488 to Cook et al. (Cook). Claims 6, 7, and 17 are rejected under 35 U.S.C. 103(a) as being obvious over Cook in view of U.S. Patent No. 4,784,867 to LaBaw et al. (LaBaw).

3. Cook does not teach or suggest mixing dry mix ingredients with a binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar or with a fat-free binder.

Claims 1 and 12, and 9 and 17 have been amended, respectively, to clarify that the method of the present invention includes mixing dry mix ingredients with a binder either consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar or with a fat-free binder containing less than 6% water and at least 94% sugar. Cook does not teach or suggest the claimed invention. Specifically, Cook does not teach or suggest mixing ingredients consisting essentially of dry mix ingredients with a binder consisting essentially of less than

about 6% by weight water and at least about 94% by weight sugar or with a fat-free binder as claimed.

In contrast, Cook teaches a food bar comprising (a) natural growth cereals (oats, wheat, rice); (b) a combination of polyhydric alcohols, such as sorbitol and glycerol, and (c) a binder system which includes sugars, corn syrup, shortening (fat – and in substantive quantity), salt, flavoring, antioxidants, and a combination of sorbitol and glycerol. See Cook, col. 2, lines 36-43. Thus, by requiring the addition of a combination of polyhydric alcohols and fat, Cook does not teach or suggest mixing ingredients consisting essentially of dry mix ingredients with a binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar or a fat-free binder.

Further, Cook does not teach or suggest a binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar. Applicants disagree with the contention that the composition of the binder of Cook is not discernible once all the ingredients are mixed. Cook is clear on what components comprise its binder system, and the binder system of Cook does not teach or suggest the claimed binder system. Cook teaches a binder solution wherein “the sugar content is relatively low...” and which includes “sugars, e.g. sucrose, invert sugars, corn syrup, and shortening; salt, flavoring, antioxidants, and a combination of sorbitol and glycerol.” See Cook, col. 2, lines 36-43 and col. 3, line 40 – col. 4, line 52 (Table I and Examples I-II). In fact, in the Cook disclosure and examples, including what is described as a typical composition of Cook, shortening (fat) is present in an amount of from about 27-33% by weight of the combined fat and sugar present. This clearly defined binder system (of Cook) is not a binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar as claimed.

Even further, this binder system of Cook teaches away from the present invention. Teaching away is a *per se* demonstration of a lack of prima facie obviousness. *In re Dow Chemical*, 837 F.2d 469 (Fed. Cir. 1988). A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be led in a direction divergent from the path that was taken by the applicant.

Tec Air, Inc., v. Denso Mfg. Mich. Inc., 192 F.3d 1353, 1360 (Fed. Cir. 1999). One skilled in the art would be led on a path divergent from a binder composition consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar by a reference teaching a fat-containing binder having "a relatively low sugar content" and which includes "sugars, e.g. sucrose, invert sugars, corn syrup, and shortening, salt, flavoring, antioxidants, and a combination of sorbitol and glycerol" as in Cook.


In view of the above, claims 1, 9, 12, and 17, and all claims dependent thereon, are patentable over Cook because Cook does not teach or suggest mixing ingredients consisting essentially of dry mix ingredients with a binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar.

Applicants further note that LaBaw does not teach or suggest mixing ingredients consisting essentially of dry mix ingredients with a binder consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar. Instead, Labaw teaches a binder composition which comprises about 5-10% by weight of water, about 15-30% by weight of fat, and a mixture of sucrose and partially caramelized non-crystallizing sugar in a weight ratio of about 1:0.8-3. See LaBaw (abstract) and col. 4, lines 17-34. Thus, LaBaw also does not teach or suggest the claimed invention.

CONCLUSION

In view of the above, claims 1-3 and 5-17 are in condition for allowance and an early indication of allowance is solicited.

Respectfully submitted,


James D. Rypdak, Reg. No. 28,754
Attorney for Applicants

Dated: 02/17/2005

RYNDAK & SURI
30 North LaSalle Street, Suite 2630
Chicago, IL 60602
312 214-7770 (phone)
312-214-7715 (fax)